

IN THE MATTER OF : BEFORE THE  
RON AND DIANE RIZAK- : HOWARD COUNTY  
WINGO : BOARD OF APPEALS  
Petitioners : HEARING EXAMINER  
 : BA Case No. 08-056V  
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### **DECISION AND ORDER**

On March 16, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Ron and Diane Rizak-Wingo for a variance to reduce the 10-foot rear setback to 6 feet for a new 28-foot wide mobile home to replace the existing 14-foot wide mobile home located in an R-MH (Residential: Mobile Home) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Don and Diane Rizak-Wingo testified in favor of the petition. No one testified in opposition to the petition.

### **FINDINGS OF FACT**

Based upon the evidence presented at the hearing, I find as follows:

1. The 4,690-square foot, generally rectangular property is located on the north side of Pirch Way between Jena Place and Ulm Place and is known as 6685 Pirch Place (the "Property"). The

Property lies in the 1<sup>st</sup> Election District and is identified on Tax Map 37, Grid 20, as Parcel 612, Lot A-90. It is part of the Deep Run Village subdivision.

2. All but three lots in the Deep Run Village subdivision are narrow and deep, with the mobile homes sited perpendicular to the street. The three "odd lots" lots, including the Property, are wide and shallow, and the mobile homes on these lots are sited parallel and closer to the street.

3. The Property is improved by a 14-foot wide mobile home with a rear bump-out and deck. The Property is accessed from an asphalt driveway and parking area in the western section of the lot. A shed is situated behind the driveway. According to the petition, the front lawn is planted with more than twenty-five established perennial plants and bushes and two mature oak trees.

4. All adjacent properties are also zoned R-MH and improved with mobile homes, excepting the Open Space Lot to the north and east.

5. The Petitioners are seeking to reduce the 10-foot rear setback to 6 feet for a new, 28-foot deep (double-wide) mobile home.

6. During the proceeding I stated that in light of the current extraordinary economic circumstances, I am extending the time to obtain required permits and to complete substantial construction pursuant to my authority to approve a phasing plan or to attach reasonable conditions to a variance

#### **CONCLUSIONS OF LAW**

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique

physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the lot's irregular shape relative to other lots in the subdivision and its shallowness are unique physical conditions, causing the Petitioners practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed dwelling will be used for a permitted purpose and is a reasonable size. Many neighboring lots are improved with double-wide mobile homes and according to the petition, the Petitioners have chosen to replace the existing mobile home with a 28-foot wide model, not the larger 30-foot wide model. Additionally, a rear variance will maintain the character of the neighborhood by retaining the average front setback. Subject to the condition that the Petitioners shall install an open fence built in compliance with Section 128 of the Zoning Regulations along the rear lot line to prevent encroachment into the Open Space Lot, the variance for the new mobile home, if granted, will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shallowness and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed home is a reasonable size. Within the intent and purpose of the regulations, the requested variance is the minimum necessary to afford relief and meets the requirements of Section 130.B.2.a(4).

**ORDER**

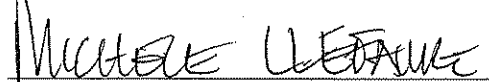
Based upon the foregoing, it is this 30<sup>th</sup> Day of March 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Don and Diane Rizak-Wingo for a variance to reduce the 10-foot rear setback to 6 feet for a 28-foot wide mobile home in an R-MH Zoning District is **GRANTED**;

**Provided, however, that:**

1. The variance shall apply only to the use and structure as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioners shall construct an open fence along the rear lot line. The Petitioners shall consult with the Department of Planning and Zoning to ensure the fence is constructed in compliance with Section 128 of the Zoning Regulations.
3. The Petitioners shall obtain all required permits.
4. The Petitioners shall obtain a building permit for the mobile home within three (3) years of the date of this Decision and Order. The Petitioners must complete substantial construction within four (4) years of the date of this Decision and Order.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**



**Michele L. LeFaivre**

**Date Mailed:** 3/31/09

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.